

a host of deceptive marketing practices, including slamming.
According to records

maintained by our consumer services department, complaints to our
Public

Information Center (PIC) hotline on these matters have increased
from 375 slamming

contacts in 1993 to 1398 contacts in 1995. Moreover, in the
first five months of 1996, our

PIC hotline has logged 993 contacts concerning slamming.
Following some reasonable

period under which we are operating in a competitive market, the
Commission may

reevaluate the rationale for this requirement and, should
conditions warrant, revise or

remove it accordingly

We also acknowledge that the CSPA specifically exempts
transactions between

public utilities and its customers from its provisions. Thus, we
decline to adopt OCC's

proposal to simply write the CSPA into these guidelines.
However, we agree with the

staff proposal to apply certain particular principles embodied
within the CSPA to

transactions between public utilities and its customers for the
same reasons which

justify our continued review of customer notices and educational
materials. In fact, in

this new regulatory environment, it is imperative that consumers
have even more

protection from the potential abuses of competitive entities than
under traditional

regulation because under traditional regulation it was clear to
consumers who they had

a complaint against whereas in a competitive environment it may
not be as clear.

Finally, we agree with the consumer interests who posit that public utilities were

exempted from the CSPA due to the extent of regulation applied by this Commission

over utility practices. With adoption of these guidelines, however, the regulatory

paradigm is changing. We do think it appropriate that the Commission, rather than

common pleas and municipal courts throughout the state, remain the forum for

adjudication of these disputes. The Commission's expertise in this area make it better

equipped at this time to address these claims. Commission jurisdiction will benefit

carriers and consumers alike and will avoid inconsistent rulings throughout the state.

As a final matter, we find that it is appropriate to make a modification to the

staff's slamming proposal. The guidelines, as revised, highlight that a customer whose

telecommunications carrier has been switched without the appropriate authorization

may file a complaint under Section 4905.26, Revised Code, with the Commission. This

is in no way a modification of, but rather an affirmation of, the rights already afforded

end users pursuant to Section 4905.26, Revised Code.

XIX. REGULATORY OVERSIGHT

By this section, staff set forth the Commission's obligations to ensure that the

regulatory framework for competing LECs encourages the establishment of a healthy

competitive market while safeguarding the public interest as set forth in Section 4927.02,

Revised Code. According to the staff proposal, the Commission reserves its right to

impose alternative requirements upon certified providers. In addition, the

Commission recognizes that it is Commission policy to monitor and to relieve,

whenever appropriate, ILECs from certain regulatory requirements to the extent that

those requirements place unreasonable obligations upon ILECs. Therefore, no later

than three years after adoption, the Commission shall review on an ILEC-specific basis

the continuing appropriateness of these guidelines. Should an ILEC desire to be

relieved of certain regulatory obligations prior to the Commission's review, it may

request relief pursuant to Sections 4927.03 or 4927.04, Revised Code. As a final matter,

the guidelines set forth a streamlined formal complaint process, under Section 4905.26,

Revised Code, for resolving disputes among carriers.

The ILECs (both LLECs and SLECs) commenting on this section primarily argue

that the Commission's guidelines should reflect on the service being provided and not

upon the entity providing the service. In addition, the competitive milestones

suggested by staff, according to the ILEC respondents, place an undue burden on the

incumbent local exchange providers. ALLTEL and Ameritech also propose striking the

dispute resolution forum as having no legal standing or enforcement capabilities

(ALLTEL initial comments at 29; Ameritech initial comments at 126). The NECs and

OCC opine that staff's proposed competitive milestones are inadequate. In support of

this position, AT&T points out that the FCC did not relax regulation on it until its share

of the competitive toll market had dropped to 58 percent (AT&T initial comments,

Appendix A, Part 2 at 56). Regarding a dispute resolution forum, OCC asserts that

negotiation is preferable to litigation and, therefore, negotiation should be attempted

prior to resorting to a Section 4905.26, Revised Code, complaint proceeding. However,

to make this option more effective, the Commission needs to commit to resolving

carrier-to-carrier disputes within a reasonable time frame (MFS initial comments at 56-

57). OCC also notes that a similar expedited complaint process should be available to

consumers as well as carriers (OCC initial comments at 92).

The Commission notes that we have already dismissed the arguments raised by

the ILECs that the Commission must require symmetric regulation of carriers with

vastly different market shares and control of bottleneck facilities. Those arguments

need not be restated here except to reaffirm our position that we will continue to

monitor and reevaluate, where appropriate, alternative requirements upon any LEC

(ILEC or NEC) abusing the guidelines addressed herein.

Appended as an attachment to the staff's proposed guidelines was a discussion of

the factors associated with performing LRSIC studies as well as a definition of terms

utilized. While several commenters note that the staff's proposal represents a decent

starting point in defining the factors associated with LRSIC studies, numerous

comments and suggested edits were submitted to the staff's proposal. For example, the

OCTA was concerned that the guidelines, as proposed, permit the ILECs to make a large

number of arbitrary decisions in the process of developing a LRSIC study. To solve this

concern, the OCTA recommends that the Commission identify a "task force" charged

with monitoring the inputs into ILEC LRSIC studies. In addition, periodic studies

addressing all services are necessary in order to ensure accuracy of any LRSIC study

according to OCTA. The OCTA also notes that, of greater methodological concern, is the

use of historical and current costs, data, and technologies in the development of a LRSIC

study. The OCTA points out that the staff's proposal is inconsistent in this area. While

not disputing the factors staff proposes to be included in a LRSIC study, Cincinnati Bell

proposes a number of specific definitional edits to the staff's LRSIC attachment.

The Commission finds that clarification of this section of the proposal is

appropriate. First, we would note that the purpose for including this detailed

explanation of LRSIC studies is to provide a framework for LECs to use in creation of

their own company-specific LRSIC studies. These guidelines represent the manner in

which staff recommends providers conduct LRSIC studies. This does not mean,

however, that a LRSIC study which varies from these guidelines and which is

appropriately justified by the company submitting the study will not be given

appropriate consideration by the Commission and its staff because we recognize that

company and product-specific factors may warrant a deviation from the proposal. We

do go on record, however, that we will look more carefully at the inputs into all LRSIC

studies by permitting only inclusion of costs properly allocable to the intrastate

telephone service operations as opposed to those more appropriately allocated to

advanced video or related services. We also will more closely scrutinize the type of

costs included. As a final matter, we make clear that LRSIC is a pricing tool primarily to

be used to establish price floors. If the ILEC chooses to price at LRSIC, however, does not

automatically establish a right for that ILEC to recover the difference between LRSIC and

the fully embedded cost (including an allocation of joint and common costs) from other

monopoly services. The merits of such recovery is open to considerable debate and will

be carefully scrutinized before we authorize an increase in monopoly basic exchange

rates.

Having thoroughly considered OCTA's proposal³⁹ that the Commission establish

a task force to monitor the inputs into ILEC LRSIC studies, the Commission finds such

recommendation to be unnecessary. Currently, when an ILEC submits a LRSIC study,

the staff performs an in-depth review of the methodology and inputs used in creating

the study. The staff then formulates a recommendation for the Commission to

consider. Parties which may be affected by the ILECs proposal are given an opportunity

to object to the ILEC's proposal either by filing an objection if it is a new service or by

filing a complaint if it is an established service. It is unclear from the OCTA's

comments whether the recommended task force would replace the role of the

Commission's staff or whether it would represent an additional layer of approvals and

ILEC would have to obtain prior to receiving approval of its LRSIC study. In any event,

we do not agree with the implication that staff is not equipped to properly review these

ILEC LRSIC studies. OCTA's comments also suggest that the proposed task force would

be empowered to review the ILEC inputs which we interpret to mean actual costs. To

the extent this task force is comprised of the ILEC's competitors, there would certainly

arise a justified concern regarding the provision of confidential, proprietary, or trade

secret information to this task force without appropriate protection. For these reasons,

OCTA's proposal on this issue is rejected.

We also note that Cincinnati Bell raises some legitimate concerns and proposes some specific language to correct particular provisions of the LRSIC attachment. Many of these proposed revisions are designed to correct the inconsistency between staff's proposal that LRSIC studies should be based on forward-looking factors and specific sections which referred to using historical-type data. We agree with Cincinnati Bell that this inconsistency needs to be clarified and have made the appropriate revisions to require that, subject to the caveats listed previously in this opinion and in the guidelines, the data inputs must be based upon forward-looking information.

TRANSITION:

To provide for an orderly transition over to the local competition guidelines, the Commission concludes that the guidelines should become effective on August 15, 1996, and all certified local exchange carriers and current applicants should be automatically transitioned over to the guideline procedures as of that date. All pending NEC applications and NEC applications filed between the issuance of this Finding and Order and August 15, 1996, will be processed using the procedures currently in place at the time of this order. While these applications would not be subject to the 60-day automatic time frame, so as not to delay NECs from entering the local market, we will

continue to process and approve applications pursuant to the current procedures. We

are committed to reviewing the applications currently pending on an expedited basis by

significantly reducing the time frames in place, especially for those cases that are not

contested. For those cases that are contested, the Commission will consider such actions

as limiting discovery time frames as well as narrowing the scope of discovery and

limiting testimony. Any case which is filed prior to August 15, 1996, and is still pending

as of August 15, 1996, and would appropriately be subject to an automatic time frame

under the local competition guidelines, will automatically be converted over to the

automatic approval process and will be treated as if the filing were made on August 15,

1996. Any pending NEC applications for which there is no automatic time frame

established in the guidelines will be handled according to the procedures deemed

appropriate by the Commission. In order to clarify the actual results of this transition

procedure, the Commission will issue a procedural entry prior to the effective date of

the guidelines for those NEC applications pending at that time.

The first filing of any type made by NECs on or after August

15, 1996, must

include a completed Registration Form (See Attachment B to Appendix A) and the

exhibits required for that type of case. For any application which is filed pursuant to an

automatic time frame established in these guidelines, the automatic time frame will not

begin to run until the appropriate Registration Form is filed.

CONCLUSION:

In light of the enactment of the 1996 Act, dramatic changes are occurring in the

local exchange market which warrant a reevaluation of this Commission's traditional

regulatory practices concerning the provision of basic local exchange services. The

regulatory principles outlined above and in the attached Appendix A, represent, in this

Commission's view, the appropriate guidelines by which to regulate those segments of

the competitive marketplace while still affording us the ability to safeguard the public

interest. The principles addressed herein will not only foster a competitive local

exchange environment, but will also afford the Commission the ability to monitor the

effectiveness of competition as well as the ability to redress problems with this model

should any arise.

ORDER:

It is, therefore,

ORDERED, That, in accordance with the above findings, it is in the public interest

to adopt, and as a result we hereby adopt, a new regulatory framework for the provision,

within Ohio, of competitive local exchange telecommunication services, as set forth in

Appendix A to this Finding and Order. It is, further,

ORDERED, That ILECs resubmit tariffs within 60 days of this Finding and Order

which remove all restrictions on resale of services except as specifically noted otherwise

in this Finding and Order. It is, further,

ORDERED, That the ILECs submit for Commission approval the revisions to

ORP/SCO discussed in this Finding and Order and in Appendix A. It is, further,

ORDERED, That any telephone company currently offering basic local exchange

service, who has not yet been certified to do so, shall file an application for certification

pursuant to the attached guidelines. It is, further,

ORDERED, That all ILECs and NECs shall comply with this order and the

attached guidelines. It is, further,

ORDERED, That the effective date of the guidelines shall be August 15, 1996. It is, further,

ORDERED, That copies of this Finding and Order be served upon all local

exchange telephone companies, interexchange carriers, radio common carriers, cellular

carriers, and competitive access providers operating in this state; all former and current

RRJ applicants; The Ohio Telephone Association; The Office of the Consumers'

Counsel; the Association of Township Trustees; County Commissioners Association;

Ohio Chamber of Commerce; Ohio Farm Bureau; Ohio Council of Retail Merchants; .

Ohio Municipal LEAGUE; the cities of Cleveland, Columbus, Cincinnati, Delaware,

Dublin, Upper Arlington, Westerville, Worthington, and the village of Powell; Ohio

Cable Telecommunications Association; the small local exchange telephone companies

of Ohio; Appalachian People's Action Coalition; Telecommunications Resellers

Association; Ashtabula County Telephone Coalition; Ohio Direct Communications, Inc.

and Ridgfield Homes, Inc.; National Emergency Number Association; United States

Department of Defense and all other Federal Executive Agencies; Ohio State Legislative

Committee of the American Association of Retired Persons; Competitive

Telecommunications Association; Ohio Domestic Violence Network;
Westside

Cellular Inc. dba Cellnet of Ohio, Inc.; Edgemont Neighborhood
Coalition; all other

persons or entities who have filed pleadings in this docket; all
person or entities who

have filed pleadings in Case No. 95-790-TP-COI; all applicants
for authority to provide

local exchange service; and upon all other interested persons of
record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Craig A. Glazer, Chairman

Jolynn Barry Butler

Richard M. Fanelly

Ronda Hartman Fergus

David W. Johnson

JRJ/gm

1 In preparing its proposal for formal comment, staff had
already evaluated over 5,000 pages of written

material, conducted 17 days of workshops with interested
stakeholders, and held numerous additional

meetings with individual entities outside the workshop process. Further, staff widely circulated an

initial proposal, thoroughly reviewed the comments received on the initial proposal, and revised its

proposal accordingly.

2 Ameritech, ALLTEL Ohio, Inc. (ALLTEL) and The Ohio Cable Telecommunications Association (OCTA)

urge the Commission to specify whether these guidelines are being adopted as formal additions to the

Ohio Administrative Code (O.A.C.). That issue will be addressed along with the legal arguments

raised by Cincinnati Bell.

3 Section 4927.03, Revised Code, authorizes the Commission to establish exemptions or alternative

regulatory requirements for competitive telephone companies. Section 4927.04, Revised Code, permits

the Commission to adopt an alternative method of establishing rates for basic local exchange service for

telephone companies.

4 As of the date of issuance of this Order, the enabling legislation is before Governor George Voinovich for

signature.

5 Duryee involved a challenge to a decision of the Superintendent of the Ohio Department of Insurance

determining the alter ego status of an applicant before the Department of Insurance.

6 Ameritech likewise sought clarification as to whether these proposals were being adopted as formal

O.A.C. rules or whether these proposals were mere statements of policy.

7 Sections 4927.03(E) and 4927.04(D), Revised Code.

8 Incumbents, incumbent LECs, or ILECs will be used to characterize that class of commenters providing

local telecommunication services throughout the 748 exchange areas on the date this order issued.

9 In this order, the term LECs will be used to represent both NECs and ILECs.

10 NECs will be used throughout this Order to represent both new entrants as well as the ILEC affiliates

which will, as discussed more fully below, be permitted to provide service in other incumbents' serving areas.

11 Case No. 90-1802-TP-ACE, Finding and Order issued December 5, 1991.

12 46 ALR Fed 626.

13 525 F2d 630, cert den 425 US 992 (1978).

14 572 F2d 17, cert den 439 US 875 (1978).

15 In making this determination, the Second Circuit Court of Appeals favorably cited Mackay Radio and

Telegraph Co., 6 F.C.C. 562 (1938).

16 24 F.C.C. 251 (1958).

17 Resale was defined by the FCC as "an activity wherein one entity subscribes to the communications

services and facilities of another entity and then reoffers communications service and facilities to the

public (with or without adding value) for profit."

18 Supplemental Finding and Order issued August 15, 1991, at 6.

19 These exempted provisions include: 1) the duty to negotiate in good faith under Section 252 particular

terms and conditions of agreements; 2) the duty to permit interconnection at any technically feasible

point within the network; 3) unbundled access to any requesting telecommunications carrier; 4) resale at

wholesale rates; 5) notice of changes necessary for transmission and routing; and 6) physical collocation.

20 The status as to whether ALLTEL and Century are either RLECs or rural carriers under the Act is

unclear. ALLTEL and Century are directed immediately to provide supporting memoranda to the staff

concerning their position on this issue. The Commission will resolve this issue upon a waiver filing by

ALLTEL and Century.

21 Staff has begun the process of formally revising the MTSS rules to make them more relevant to the

needs of today's consumers. All stakeholders should avail themselves of the opportunity prior to the

formulation and publication of specific MTSS standards to discuss their views on this issue with staff.

22 This is an overview of the list of items to be included in a bona fide request for interconnection. This list

is not an exhaustive one.

23 See also the Commission's guidelines and procedures governing negotiation and arbitration in Case No.

96-463-TP-UNC.

24 The revised guidelines do not address interconnection and compensation arrangements between LECs and

cellular carriers. Such arrangements remain subject to the FCC and Commission requirements.

25 We recognize that this determination addresses an issue raised in AT&T's complaint, Case No. 96-36-

TP-CSS against Ameritech. However, we specifically note that a remaining issue is the rate AT&T

must pay for access. That issue remains open for resolution in Case No. 96-336-TP-CSS.

26 The exception to this general standard would be the pricing guidelines applicable to interim and long-

term number portability for all LECs and wholesale pricing applicable to ILECs only.

27 Pursuant to Section 251(b)(1) of the 1996 Act and the Resale Guidelines discussed below, NECs have an

obligation not to prohibit and not to impose unreasonable or discriminatory conditions or limitations on

the resale of its telecommunications services. However, NECs are not subject to any pricing standards on

resold services other than the unreasonable or discriminatory standard discussed above.

28 For example, NEC surcharges and MTS rates offered in conjunction with alternative operator services

will be capped at the levels established by the Commission in 563.

29 Appendix A, Attachment B.

30 This obligation applies to all ILECs not subject to the RLEC exemption or for which a modification or

suspension has been obtained pursuant to the procedures outlined for rural carriers in Section 251(f)(2).

31 LECs are defined under the 1996 Act as any person engaged in the provision of telephone exchange or

exchange access. This definition would include LECs and NECs as those terms are used within this

order.

32 Conspicuously absent from Cincinnati Bell's legal analysis is any discussion of the most recent United

States Supreme Court cases to address taking claims as they relate to public utility property.

Additionally, the Ohio Supreme Court, in *Celina*, supra, rejected an unconstitutional taking claim

holding that utilities which are subject to regulation by the public utilities act, Section 614-2a, General

Code, are subject to different taking standards than private businesses.

33 By addressing this argument, the Commission is in no way conceding

that Cincinnati Bell's taking argument is valid.

34 Ameritech is one of the Bell Operating Companies.

35 Smart or multi-PIC presubscription enables subscribers to select multiple carriers for various subdivisions

of their intra and interLATA calls.

36 Under the terms of 1996 Act, any increases in the rates for pole attachments that result from adoption of

the requirements in the act are to be phased in over a period of five years following the date of enactment.

37 The City of Cleveland also proposes liberalized payment arrangements, local disconnection only for the

nonpayment of local service charges, and the establishment of a minimum repayment requirement in

order to reestablish service. As pointed out by Ameritech, these issues are under consideration by the

Commission in Case No. 95-790-TP-COI and need not be addressed in this docket.

38 The BCM was jointly developed by MCI, NYNEX Corporation, Sprint Corporation, and US

West Inc.

39 This concept was not well developed in OCTA's comments.

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